

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
Implementation of Section 621(a)(1) of)
the Cable Communications Policy Act of 1984)
as amended by the Cable Television Consumer)
Protection and Competition Act of 1992)

MB Docket No. 05-311

COMMENTS OF WINSTON-SALEM

These Comments are filed by the City of Winston-Salem in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, Winston-Salem believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

Winston-Salem is a city with a population of 195,536. Our franchised cable provider is Time Warner Cable. Our community has negotiated cable franchises since 1969.

Our Current Franchise

Our current franchise began on February 8, 2002 and expires on February 8, 2017. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we *are not* currently negotiating a franchise renewal with the incumbent provider.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have one channel (or capacity) devoted to public access; one channels (or capacity) devoted to educational access; and one channels (or capacity) devoted to government access.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: The cable operator shall provide \$500,000 to the City as a one-time grant to fund the purchase of equipment and other capital items in support of PEG Access Channels. In addition, the cable operator offered and the City accepted a total of \$450,000 for operational support.

Our franchise contains an institutional network ("I-Net") with the following requirements: The cable operator is required to provide to the city sixteen strands of dark fiber optic cable that interconnects various city offices for the purpose of operating an I-Net. The cable operator is required to service the fiber optic cable network and keep it operational and in good working condition for the city. The city pays Time Warner \$14,000/yr. in exchange for maintenance of the fiber. So long as the cable operator offers a high speed cable modem service, the cable operator shall provide such service to the city, upon request, at (1) a price equal to that which the cable operator charges its most favored commercial customer for the same level of service or (2) at a twenty percent (20%) discount off the applicable commercial rate, whichever rate is most beneficial to the city. Any rate charged to the city based upon the most favored commercial customer rate shall become effective not more than sixty (60) days from the date the cable operator has entered into a contract with the most favored commercial customer. The twenty percent (20%) discount shall not be treated as a franchise related cost in accordance with the Federal Communications Commission rate regulatory procedures. We use our I-Net facilities as part of a wide area network that is critical to daily operations of city government.

Our franchise contains requirements regarding emergency alerts: The cable operator must provide emergency alert override capabilities in a manner consistent with the FCC's emergency alerting system ("EAS") rules and consistent with any state and/or regional emergency alert system plans adopted in response to the FCC's EAS rules that are applicable in the franchise area. These emergency alert requirements provide an important avenue of communication with our residents in the event of an emergency.

Our franchise contains customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. The cable operator is required to comply with the FCC standards (Title 47 CFR, Part 76.309 (Cable Television Services), Subpart H (General Operating Requirements) as amended.

The cable operator will maintain a local, toll -free or collect telephone access line that is available to cable subscribers 24 hours per day, seven days per week. This access line must be staffed by trained representatives during normal business hours. After normal business hours, the access line may be answered by automated response system or answering service. A trained representative must respond to after hour business calls during the next business day. Under normal operating conditions, telephone answer time by a trained representative, including wait

time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under normal operating conditions, measured on a quarterly basis. Under normal operating conditions, the customer will receive a busy signal less than three (3) percent of the time.

Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

Installations, outages and service calls.

Under normal operating conditions, each of the following standards will be met no less than ninety-five (95) percent of the time measured on a quarterly basis:

- (A) Standard installations will be performed within seven (7) business days after an order has been placed.
- (B) Excluding conditions beyond the control of the cable operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known. The cable operator must begin actions to correct other service problems the next business day after notification of the service problem.
- (C) The "appointment window" alternatives for installations, service calls and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The cable operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)
- (D) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled,, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time that is convenient for the customer.
- (E) A cable operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

Communications between cable operators and cable Subscribers.

- (A) Notifications to Subscribers.
 - (1) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all Subscribers, and at any time upon request:
 - (i) Products and services offered;
 - (ii) Prices and options for programming services and conditions of subscription to programming and other services;
 - (iii) Installation and service maintenance policies;
 - (iv) Instruction on how to use the Cable Service;
 - (v) Channel positions of programming carried on the system; and

- (vi) Billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.
- (2) Customers will be notified of any changes in rates, programming service or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by paragraph (c)(3)(i)(A). Notwithstanding any other provision of Part 76, a cable operator shall not be required to provide prior notice of any rate change that is the result of a regulatory fee, franchise fee, or any other fee, tax, assessment, or charge of any kind imposed by any Federal agency, State or franchising authority on the transaction between the operator and the Subscriber.
- (B) Billing.
 - (1) Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations, including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.
 - (2) In case of a billing dispute, the cable operator must respond to a written complaint from a Subscriber within thirty (30) days.
- (C) Refunds. Refund checks will be issued promptly, but no later than either:
 - (1) the customer's next billing cycle following resolution or the request of thirty (30) days, whichever is earlier; or
 - (2) the return of the equipment supplied by the cable operator if service is terminated.
- (D) Credits. Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

In the event a cable operator wishes to construct a cable system in the city, the city would expect that within ninety (90) days of obtaining all necessary permits, licenses and authorizations, the cable operator shall commence construction and installation of the cable television system. Within eight (8) months after the commencement of the construction and installation of the system, the cable operator shall proceed to render service to subscribers, and the completion of the system shall be pursued with reasonable diligence thereafter. Failure on the part of the cable operator to commence and diligently pursue each of the foregoing requirements and to complete each of the matters set forth herein, or failure to commence rendering service to subscribers within eighteen (18) months after acceptance of the franchise, shall be grounds to terminate the franchise unless the city council extends the time period for commencement and completion of cable television system.

Our franchise requires that the cable operator provide service to the following areas of our community: The cable operator shall serve all areas of the city equally with a population of at least fifty (50) residential dwelling units per cable mile as measured from the cable operator's existing distribution system, including areas annexed subsequent to the grant of the Franchise.

Our franchise requires that the cable operator maintains a state of the art system, which has led to a recent rebuild of the system that is state of the art offering analog, digital cable and cable modem services throughout the franchise service area. The state of the art requirement ensures that our residents have access to current telecommunications technologies, based upon the following rebuild or upgrade requirements: In order to initiate the state of the art option, the cable operator must not be subject to effective competition and the city shall first commence a review of the cable system. There shall be no more than one (1) such review every two (2) calendar years. A review may not commence prior to the ninth (9) or after the twelfth (12) anniversary of the acceptance date. The review shall take into account the characteristics of the existing cable system, the state of the art, the marketplace demand for the state of the art under consideration, and the impact of rate increases.

Our franchise contains a "level playing field" provision which states the following: Any franchise granted, when evaluated as a whole, shall not be more favorable or less burdensome than any other Franchise granted by the city. The city may make such modifications as it deems necessary to ensure that the terms of the additional franchise are no more favorable or less burdensome than those imposed upon the existing cable operator. The city may modify the terms and requirements of existing franchises as mutually agreed by the existing cable operator, and if the existing cable operator does not reasonably so agree the city shall be deemed to have fulfilled its obligations for a level playing field. The city may adjust the PEG capital and operating grant requirements to ensure the total dollars contributed by a new cable operator are the same as required of existing cable operators. In the event, existing cable operators have paid the city amounts in excess of the amounts required of the new cable operator, the city will refund the difference to the existing cable operators.

Our franchise contains the following insurance and bonding requirements: The cable operator is required to maintain general liability insurance that contains coverage for comprehensive form, premises, operations, explosion and collapse hazard, underground hazard, products/completed operations hazard, contractual insurance, broad form property damage, and personal injury. Automobile liability insurance is required for all owned, non-owned, or rented vehicles used by the cable operator, its agents, officials, or employees. The cable operator is required to maintain at its own expenses with the city a performance bond in the amount of one hundred thousand dollars (\$100,000) for the faithful performance of by it of all the provision of the franchise

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: The city shall have the right, upon reasonable request, to inspect and copy or transcribe at any time during normal business hours, all books, records, maps, plans, financial records, service complaint logs, performance test results and other like material of the cable operator kept or maintained by the cable operator or under its control concerning the operations, finances, affairs, transactions or property of the cable operator when necessary to ascertain the cable operator's compliance with the franchise agreement. Access to the aforementioned records shall not be denied by the cable operator on the basis that the said records contain "proprietary" information. The cable operator shall prepare and furnish to the city reports concerning its operations, financial affairs, transactions or property, technical performance that are necessary to determine the cable operator's compliance with the franchise agreement.

The Franchising Process

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement constitute contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: In the event of a change in state or federal law which by its terms would require the city to amend its Master Cable Service Regulatory Ordinance, the city and the cable operator shall modify the existing franchise in a mutually agreed upon manner.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. By North Carolina law, there must be a public reading at two regularly scheduled city council meetings for each franchise under consideration.

Competitive Cable Systems

In July of 2000, our community was approached by a competitive provider to offer cable service in our city. After significant effort, the provider chose to halt discussions due to financial challenges in obtaining sufficient capital investment.

Conclusions

The local cable franchising process functions well in Winston-Salem. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

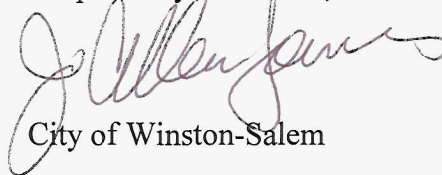
Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors apply equally to new entrants and existing users.

Winston-Salem therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "J. Allen Joines", is written over the printed name.

City of Winston-Salem

By: Mayor Allen Joines
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